

CONFIDENTIAL

[Date], 2019

Via Email, Certified and Regular Mail

[John Smith, Esq.]

[address]

[address]

Re: Case No. 19008.C; Letter of Admonition

Dear Mr. [Smith]:

On Friday, [Date], 2019, your client, [X], called me and explained that two (2) campaign mailers for her [elected official] [] election campaign were mailed out that week, and that each showed photos of her in a jacket or sweater with the Official City Seal on them. I explained to her that this constitutes an apparent violation of the Ordinance pursuant to Board Case No. 18036.A.1, which prohibits the use of the seal for political or campaign-related communications. I asked that she forward the campaign flyers via email, which she did that day, and also advised her to take whatever possible steps she could take to countermand the second mailing, which, she said, was at the U.S. Post Office. The first mailing, she said, landed in the mailboxes on [date], 2019. I also explained that the Board would consider the matter at the Board's January 2019 meeting, and could make a confidential probable cause finding, which would entitle her (and/or her attorney) to meet with the Board, also confidentially, and present facts and answer questions in her defense. In addition, I said, the Board could consider that in one of the mailers there is a man in what appears to be a [City Department 1] ("City 1") uniform, with [equipment], though no [City 1] insignia is visible, and another shows a [City Department 2] ("City 2") [equipment] in the background, with [City 2]'s insignia and the number "[number]" visible.

On March 15, 2019, on behalf of [X], you attended the Board meeting to discuss the Board's January 18, 2019 probable cause finding. You and the Board discussed that, as well as the mailers' showing a man in what appears to be a [City 1] uniform and the [City 2] [equipment] with the [City 2] insignia and number "[number]" visible. Among other things discussed, you noted that [X] had self-reported these mailings to me and that, in your opinion, the overall placement of the City seal in the mailers was relatively insignificant.

After your presentation, the Board considered the matter, focusing on the City seal (it will at a later date issue clear guidance on the use of [City 1] and [City 2] personnel, equipment, and insignia in such mailers and communications). After deliberating, the Board determined that [X]'s inclusion of the City seal in these mailings constituted a "minor" Ordinance violation. It then directed me to send you, as her attorney, this confidential letter of admonition.

Thus, [X] is hereby admonished not to use the City seal in any “printed, filmed, broadcast or web-based electioneering communications supporting a candidate for City office, unless the appropriate City authorities authorize it, by ordinance or license agreement.” Such appropriate authorities may constitute the City Council (by Ordinance), for example. In the absence of such an ordinance or other explicit authorization, the Board’s advisory opinion in Case No. 18036.A.1 governs, and it specifically prohibits the use of the City seal in electioneering or campaign communications or mailers.¹

On behalf of the Board, I appreciate your appearance at the Board and presentation to it, as well as [X]’s honesty and desire to comply with the standards and requirements embodied in the Ordinance. Please contact me if you or the [X] has any questions.

Very truly yours,

Steven I. Berlin
Executive Director

¹ In Case No. 14006.A, the Board set out the factors to consider when considering whether a violation is minor: (i) would determining that the violation was minor still uphold the spirit of the Ordinance; (ii) would a third party view the violation as technical and, finally; (iii) whether there was a pattern evincing a negligent disregard of the Ordinance.